

Senate Concurrent Resolution No. 1610

By Committee on Federal and State Affairs

3-27

1 A PROPOSITION to amend the constitution of the state of Kansas by
2 revising article 3 thereof, relating to the judiciary.

3
4 *Be it resolved by the Legislature of the State of Kansas, two-thirds of*
5 *the members elected (or appointed) and qualified to the Senate and two-*
6 *thirds of the members elected (or appointed) and qualified to the House*
7 *of Representatives concurring therein:*

8 Section 1. The following proposition to amend the constitution of
9 the state of Kansas shall be submitted to the qualified electors of the state
10 for their approval or rejection: Article 3 of the constitution of the state of
11 Kansas is hereby revised to read as follows:

"Article 3.—JUDICIAL"

12
13 **"§ 1. Judicial power; seals; rules.** The judicial power of
14 this state shall be vested exclusively in one court of justice,
15 which shall be divided into one supreme court, one court of
16 appeals, district courts, and such other courts as are provided by
17 law; and all courts of record shall have a seal. The supreme
18 court shall have general administrative authority over all courts
19 in this state.

20 **"§ 2. Supreme court.** The supreme court shall consist of
21 not less than seven justices who shall be selected as provided by
22 this article. All cases shall be heard with not fewer than four
23 justices sitting and the concurrence of a majority of the justices
24 sitting and of not fewer than four justices shall be necessary for
25 a decision. The term of office of the justices shall be six years
26 except as hereinafter provided. The justice who is senior in
27 continuous term of service shall be chief justice, and in case two
28 or more have continuously served during the same period, the
29 senior in age of these shall be chief justice. A justice may
30 decline or resign from the office of chief justice without
31 resigning from the court. Upon such declination or resignation,
32 the justice who is next senior in continuous term of service shall
33 become chief justice. During incapacity of a chief justice, the
34 duties, powers and emoluments of the office shall devolve upon
35 the justice who is next senior in continuous service.

36 **"§ 3. Jurisdiction and terms.** The supreme court shall

1 have original jurisdiction in proceedings in quo warranto,
2 mandamus, and habeas corpus; and such appellate jurisdiction
3 as may be provided by law. It shall hold one term each year at
4 the seat of government and such other terms at such places as
5 may be provided by law, and its jurisdiction shall be co-
6 extensive with the state.

7 **"§ 4. Reporter; clerk.** There shall be appointed, by the
8 justices of the supreme court, a reporter and clerk of such court,
9 who shall hold their offices for two years, and whose duties
10 shall be prescribed by law.

11 **"§ 5. Selection of justices of the supreme court.** (a) (1)
12 Any vacancy occurring in the office of any justice of the
13 supreme court and any position to be open on the supreme court
14 as a result of enlargement of such court, or the retirement or
15 failure of an incumbent to file such justice's declaration of
16 candidacy to be retained in office as hereinafter required, or
17 failure of a justice to be elected to be retained in office, shall be
18 filled by appointment by the governor, with the consent of the
19 senate, of a person possessing the qualifications of office.

20 (2) Whenever a vacancy occurs, will occur or a position
21 opens on the supreme court, the clerk of the supreme court shall
22 promptly give notice to the governor.

23 (3) In the event of the failure of the governor to make the
24 appointment within 60 days from the date such vacancy
25 occurred or such position became open, the chief justice of the
26 supreme court, with the consent of the senate, shall make the
27 appointment of a person possessing the qualifications of office.

28 (4) Whenever a vacancy in the office of justice of the
29 supreme court exists at the time the appointment to fill such
30 vacancy is made pursuant to this section, the appointment shall
31 be effective at the time it is made, but where an appointment is
32 made pursuant to this section to fill a vacancy that will occur at
33 a future date, such appointment shall not take effect until such
34 date.

35 (b) No person appointed pursuant to subsection (a) shall
36 assume the office of justice of the supreme court until the
37 senate, by an affirmative vote of the majority of all members of
38 the senate then elected or appointed and qualified, consents to
39 such appointment. The senate shall vote to consent to any such
40 appointment not later than 60 days after such appointment is
41 received by the senate. If the senate is not in session and will
42 not be in session within the 60-day time limitation, the senate
43 shall vote to consent to any such appointment not later than 20

1 days after the senate begins its next session. In the event a
2 majority of the senate does not vote to consent to the
3 appointment, the governor, within 60 days after the senate vote
4 on the previous appointee, shall appoint another person
5 possessing the qualifications of office, and such subsequent
6 appointment shall be considered by the senate in the same
7 procedure as provided in this article. The same appointment and
8 consent procedure shall be followed until a valid appointment
9 has been made. No person who has been previously appointed
10 but did not receive the consent of the senate shall be appointed
11 again for the same vacancy. If the senate fails to vote on an
12 appointment within the time limitation imposed by this
13 subsection, the senate shall be deemed to have given consent to
14 such appointment.

15 (c) (1) Each justice of the supreme court appointed
16 pursuant to subsection (a) and consented to pursuant to
17 subsection (b) shall hold office for an initial term ending on the
18 second Monday in January following the first general election
19 that occurs after the expiration of 12 months in office.

20 (2) Not less than 60 days prior to the holding of the general
21 election next preceding the expiration of the term of any justice
22 of the supreme court, the justice may file in the office of the
23 secretary of state a declaration of candidacy for retention in
24 office. If a declaration is not filed as provided in this section,
25 the position held by the justice shall be vacant upon the
26 expiration of the justice's term of office. If such declaration is
27 filed, the justice's name shall be submitted at the next general
28 election to the electors of the state on a separate judicial ballot,
29 without party designation, reading substantially as follows:
30 "Shall (Here insert name of justice.), Justice of the Supreme
31 Court, be retained in office?"

32 (3) If a majority of those voting on the question vote
33 against retaining the justice in office, the position that the
34 justice holds shall be vacant upon the expiration of the justice's
35 term of office. Otherwise, unless the justice is removed for
36 cause, the justice shall remain in office for the regular term of
37 six years from the second Monday in January following the
38 election. At the expiration of each term, unless by law the
39 justice is compelled to retire, the justice shall be eligible for
40 retention in office by election in the manner prescribed in this
41 section.

42 (4) If a majority of those voting on the question vote
43 against the justice's retention, the secretary of state, following

1 the final canvass of votes on the question, shall certify the
2 results to the clerk of the supreme court. Any such justice who
3 has not been retained in office pursuant to this section shall not
4 be eligible for appointment to the office of justice of the
5 supreme court prior to the expiration of six years after the
6 expiration of the justice's term of office.

7 **"§ 6. Court of appeals.** (a) (1) The court of appeals shall
8 consist of 14 judges whose positions shall be numbered one
9 through 14. The court of appeals shall be a part of the court of
10 justice in which the judicial power of the state is vested by
11 section 1 of this article and shall be subject to the general
12 administrative authority of the supreme court. The court of
13 appeals shall have such jurisdiction over appeals in civil and
14 criminal cases and from administrative bodies and officers of
15 the state as may be prescribed by law, and shall have such
16 original jurisdiction as may be necessary to the complete
17 determination of any cause on review. During the pendency of
18 any appeal, the court of appeals, on such terms as may be just,
19 may make an order suspending further proceedings in the court
20 below until the decision of the court of appeals.

21 (2) Any vacancy occurring in the office of any judge of the
22 court of appeals and any position to be open on the court of
23 appeals as a result of enlargement of such court, or the
24 retirement or failure of an incumbent to file such judge's
25 declaration of candidacy to be retained in office as hereinafter
26 required, or failure of a judge to be elected to be retained in
27 office, shall be filled by appointment by the governor, with the
28 consent of the senate, of a person possessing the qualifications
29 of office.

30 (3) Whenever a vacancy occurs, will occur or a position
31 opens on the court of appeals, the clerk of the supreme court
32 shall promptly give notice to the governor.

33 (4) In the event of the failure of the governor to make the
34 appointment within 60 days from the date such vacancy
35 occurred or such position became open, the chief justice of the
36 supreme court, with the consent of the senate, shall make the
37 appointment of a person possessing the qualifications of office.

38 (5) Whenever a vacancy in the office of judge of the court
39 of appeals exists at the time the appointment to fill such
40 vacancy is made pursuant to this section, the appointment shall
41 be effective at the time it is made, but where an appointment is
42 made pursuant to this section to fill a vacancy which will occur
43 at a future date, such appointment shall not take effect until

1 such date.

2 (b) No person appointed pursuant to subsection (a) shall
3 assume the office of judge of the court of appeals until the
4 senate, by an affirmative vote of the majority of all members of
5 the senate then elected or appointed and qualified, consents to
6 such appointment. The senate shall vote to consent to any such
7 appointment not later than 60 days after such appointment is
8 received by the senate. If the senate is not in session and will
9 not be in session within the 60-day time limitation, the senate
10 shall vote to consent to any such appointment not later than 20
11 days after the senate begins its next session. In the event a
12 majority of the senate does not vote to consent to the
13 appointment, the governor, within 60 days after the senate vote
14 on the previous appointee, shall appoint another person
15 possessing the qualifications of office, and such subsequent
16 appointment shall be considered by the senate in the same
17 procedure as provided in this article. The same appointment and
18 consent procedure shall be followed until a valid appointment
19 has been made. No person who has been previously appointed
20 but did not receive the consent of the senate shall be appointed
21 again for the same vacancy. If the senate fails to vote on an
22 appointment within the time limitation imposed by this
23 subsection, the senate shall be deemed to have given consent to
24 such appointment.

25 (c) (1) Each judge of the court of appeals appointed
26 pursuant to subsection (a) and consented to pursuant to
27 subsection (b) shall hold office for an initial term ending on the
28 second Monday in January following the first general election
29 that occurs after the expiration of 12 months in office.

30 (2) Not less than 60 days prior to the holding of the general
31 election next preceding the expiration of the term of any judge
32 of the court of appeals, the judge may file in the office of the
33 secretary of state a declaration of candidacy for retention in
34 office. If a declaration is not filed as provided in this section,
35 the position held by the judge shall be vacant upon the
36 expiration of the judge's term of office. If such declaration is
37 filed, the judge's name shall be submitted at the next general
38 election to the electors of the state on a separate judicial ballot,
39 without party designation, reading substantially as follows:
40 "Shall (Here insert name of judge.), Judge of the Court of
41 Appeals, be retained in office?"

42 (3) If a majority of those voting on the question vote
43 against retaining the judge in office, the position that the judge

1 holds shall be vacant upon the expiration of the judge's term of
2 office. Otherwise, unless the judge is removed for cause, the
3 judge shall remain in office for the regular term of four years
4 from the second Monday in January following the election. At
5 the expiration of each term, unless by law the judge is
6 compelled to retire, the judge shall be eligible for retention in
7 office by election in the manner prescribed in this section.

8 (4) If a majority of those voting on the question vote
9 against the judge's retention, the secretary of state, following the
10 final canvass of votes on the question, shall certify the results to
11 the clerk of the supreme court. Any such judge who has not
12 been retained in office pursuant to this section shall not be
13 eligible for appointment to the office of judge of the court of
14 appeals prior to the expiration of four years after the expiration
15 of the judge's term of office.

16 (d) The supreme court may assign a judge of the court of
17 appeals to serve temporarily on the supreme court.

18 **"§ 7. District courts.** (a) The state shall be divided into
19 judicial districts as provided by law. Each judicial district shall
20 have at least one district judge. The term of office of each judge
21 of the district court shall be four years. District court shall be
22 held at such times and places as may be provided by law. The
23 district judges shall be elected by the electors of the respective
24 judicial districts unless the electors of a judicial district have
25 adopted and not subsequently rejected a method of nonpartisan
26 selection. The legislature shall provide a method of nonpartisan
27 selection of district judges and for the manner of submission
28 and resubmission thereof to the electors of a judicial district. A
29 nonpartisan method of selection of district judges may be
30 adopted, and once adopted may be rejected, only by a majority
31 of electors of a judicial district voting on the question at an
32 election in which the proposition is submitted. Whenever a
33 vacancy occurs in the office of district judge, it shall be filled
34 by appointment by the governor until the next general election
35 that occurs more than 30 days after such vacancy, or as may be
36 provided by such nonpartisan method of selection.

37 (b) The district courts shall have such jurisdiction in their
38 respective districts as may be provided by law.

39 (c) The legislature shall provide for clerks of the district
40 courts.

41 (d) Provision may be made by law for judges pro tem of
42 the district court.

43 (e) The supreme court or any justice thereof shall have the

1 power to assign judges of district courts temporarily to other
2 districts.

3 (f) The supreme court may assign a district judge to serve
4 temporarily on the supreme court.

5 (g) The supreme court or the court of appeals may assign a
6 district judge to serve temporarily on the court of appeals.

7 **"§ 8. Qualifications of justices and judges.** Justices of the
8 supreme court, judges of the court of appeals and judges of the
9 district courts shall be at least 30 years of age and shall be duly
10 authorized by the supreme court of Kansas to practice law in the
11 courts of this state and shall possess such other qualifications as
12 may be prescribed by law.

13 **"§ 9. Prohibition of political activity by justices and
14 certain judges.** No justice of the supreme court who is
15 appointed or retained under the procedure of section 5 of this
16 article, nor any judge of the court of appeals who is appointed
17 or retained under the procedure of section 6 of this article, nor
18 any judge of the district court holding office under a
19 nonpartisan method authorized in section 7(a) of this article,
20 shall directly or indirectly make any contribution to or hold any
21 office in a political party or organization or take part in any
22 political campaign.

23 **"§ 10. Extension of terms until successor qualified.** All
24 judicial officers shall hold their offices until their successors
25 shall have qualified.

26 **"§ 11. Compensation of justices and judges; certain
27 limitation.** The justices of the supreme court, judges of the
28 court of appeals and judges of the district courts shall receive
29 for their services such compensation as may be provided by
30 law, which shall not be diminished during their terms of office,
31 unless by general law applicable to all salaried officers of the
32 state. Such justices or judges shall receive no fees or perquisites
33 nor hold any other office of profit or trust under the authority of
34 the state, or the United States except as may be provided by law,
35 or practice law during their continuance in office.

36 **"§ 12. Removal of justices and judges.** Justices of the
37 supreme court may be removed from office by impeachment
38 and conviction as prescribed in article 2 of this constitution. In
39 addition to removal by impeachment and conviction, justices
40 may be retired after appropriate hearing, upon certification to
41 the governor, by the supreme court that such justice is so
42 incapacitated as to be unable to perform adequately such
43 justice's duties. Other judges shall be subject to retirement for

1 incapacity, and to discipline, suspension and removal for cause
2 by the supreme court after appropriate hearing.

3 "§ 13. **Savings clause.** Nothing contained in this
4 amendment to the constitution shall: (a) Shorten the term of
5 office or abolish the office of any justice of the supreme court,
6 any judge of the court of appeals, any judge of the district court,
7 or any other judge of any other court who is holding office at
8 the time this amendment becomes effective, or who is holding
9 office at the time of adoption, rejection, or resubmission of a
10 nonpartisan method of selection of district judges as provided in
11 section 7(a) of this article, and all such justices and judges shall
12 hold their respective offices for the terms for which elected or
13 appointed, unless sooner removed in the manner provided by
14 law; (b) repeal any statute of this state relating to the supreme
15 court, the supreme court nominating commission, the court of
16 appeals, district courts, or any other court, or relating to the
17 justices or judges of such courts, and such statutes shall remain
18 in force and effect until amended or repealed by the legislature."

19 Sec. 2. The following statement shall be printed on the ballot with
20 the amendment as a whole:

21 "*Explanatory statement.* The purpose of this amendment is to
22 place the law concerning the court of appeals into the
23 constitution and to do away with the supreme court
24 nominating commission. The governor will appoint a
25 qualified person, or if the governor fails to act, the chief
26 justice of the supreme court would appoint a qualified
27 person, and such person's appointment would require the
28 consent of the senate. If the senate does not consent to the
29 appointment by a majority vote, the governor would then
30 appoint another qualified person, and such person's
31 appointment would again go to the senate for consent. The
32 same appointment and consent procedure would be followed
33 until a valid appointment is made. If the senate fails to vote
34 on an appointment within 60 days, it will be considered that
35 the senate has given consent to the appointment.

36 "A vote for this proposition would provide a procedure whereby
37 the governor or chief justice would appoint a person to be a
38 supreme court justice or court of appeals judge, and the
39 senate, by majority vote, would consent to the appointment
40 of the supreme court justice or court of appeals judge.

41 "A vote against this proposition would continue the current
42 system in which justices of the supreme court are appointed
43 by the governor from a list of three individuals submitted by

1 the supreme court nominating commission, and judges of the
2 court of appeals are appointed by the governor, with the
3 consent of the senate."

4 Sec. 3. This resolution, if approved by two-thirds of the members
5 elected (or appointed) and qualified to the Senate, and two-thirds of the
6 members elected (or appointed) and qualified to the House of
7 Representatives shall be entered on the journals, together with the yeas
8 and nays. The secretary of state shall cause this resolution to be published
9 as provided by law and shall cause the proposed amendment to be
10 submitted to the electors of the state at the general election in November
11 in the year 2020, unless a special election is called at a sooner date by
12 concurrent resolution of the legislature, in which case it shall be
13 submitted to the electors of the state at the special election.